

<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>		Docket Number <b>Q86736</b>
Mail Stop AF Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450	Application Number <b>10/530,680</b>	Filed <b>April 8, 2005</b>
	First Named Inventor <b>Laurent DECOTTIGNIES</b>	
	Art Unit <b>3754</b>	Examiner <b>Lien M. NGO</b>
	WASHINGTON OFFICE <b>23373</b> <small>CUSTOMER NUMBER</small>	
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.		
This request is being filed with a notice of appeal		
The review is requested for the reasons(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.		
<input checked="" type="checkbox"/> I am an attorney or agent of record. Registration number <u>46,027</u> _____ /John M. Bird/ _____ Signature		
<u>John M. Bird</u> _____ Typed or printed name		
<u>(202) 293-7060</u> _____ Telephone number		
<u>July 11, 2008</u> _____ Date		

**PATENT APPLICATION**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of

Docket No: Q86736

Laurent DECOTTIGNIES, et al.

Appln. No.: 10/530,680

Group Art Unit: 3754

Confirmation No.: 7345

Examiner: Lien M. NGO

Filed: April 8, 2005

For: FLUID DISPENSER

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

**MAIL STOP AF - PATENTS**

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

Pursuant to the Pre-Appeal Brief Conference Pilot Program, and further to the Examiner's Final Office Action dated February 11, 2008, Applicant files this Pre-Appeal Brief Request for Review. This Request is also accompanied by the filing of a Notice of Appeal.

By the Amendment dated May 7, 2008, which was entered by the Examiner, claims 1, 8, 9, 11, and 12 have been canceled. Thus, only claims 4-7, 10, and 12 remain pending. Claims 4, 10, and 12 are independent claims.

Applicant has corrected a minor error in dependent claim 6 and has canceled dependent claim 8, rendering the previous rejections under 35 U.S.C. § 112 and §103 moot.

Therefore, the rejection under 35 U.S.C. §102 is the only rejection. The §102 rejection, this is clearly erroneous because certain features from each independent claim are missing from the prior art. In addition, the Examiner *provided no comments* with respect to these features in

the Advisory Action dated May 13, 2008. Accordingly, Applicant believes that it is appropriate to reverse the Examiner's rejection after a Pre-Appeal Brief review.<sup>1</sup>

**Claim Rejection Under 35 U.S.C. § 102**

Claims 1, 4-7 and 9-13 are rejected under 35 U.S.C. § 102(c) as being anticipated by Lasserre et al. (US 6,722,532). Claims 4-7, 10, and 12 are pending.

**Claim 4**

Applicant respectfully traverses the rejection of independent claim 4 at least because Lasserre does not disclose all of the claim's recitations. For example, Lasserre does not disclose the claimed fluid dispenser including *blocking means for blocking the dispenser units in the receiver means*.

The Examiner is misapprehending either the disclosure in Lasserre or the blocking function of the recited "blocking means." As the recited "blocking means" is a means-plus-function limitation, the feature in Lasserre asserted by the Examiner as corresponding to the "blocking means" must perform the recited function of *blocking the dispenser units in the receiver means*, i.e., preventing the dispenser units from being removed from the receiving means.<sup>2</sup> That is, as shown in FIG. 1 of the original specification, the exemplary blocking means, or cup 7, *blocks* the dispenser units 1 in the receiver means 62.<sup>3</sup>

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<sup>1</sup> See <http://www.uspto.gov/web/offices/com/sol/og/2005/week28/patbref.htm>.

<sup>2</sup> See MPEP §2183.

<sup>3</sup> See original specification at page 9, lines 5-8.

In the Office Action dated February 11, 2008, the Examiner asserted that Lasserre's housing 5 corresponds to the recited "blocking means."<sup>4</sup> However, it is clear that Lasserre's housing 5 is not the blocking means because the Examiner has already asserted that the outer skirt 25 of the housing 5 corresponds to the previously recited "common outer shell."<sup>5</sup>

During a telephone interview on April 29, 2008, the Examiner asserted that Lasserre's closure elements 11 correspond to the recited "blocking means" of claim 4. As shown in FIGS. 1 and 11, Lasserre's closure elements 11 snap into place within the housing 5. It now appears to be the Examiner's position that the closure elements 11 "block" the dispenser unit because the closure elements are provided above the fluid conducting member 10, and hoods 49 of the fluid conducting member 10 are placed on the valve stems 15 of the valve.<sup>6</sup>

However, these closure elements 11 of Lasserre are not capable of preventing the dispenser containers 3, 4 from being removed from the receiver tubes 16. Instead, the closure elements 11 are merely inserted into the housing 5 from above and are not designed to secure the containers 3, 4 in the receiver tubes 16.

At this time, the Examiner has *provided no comments* with respect to this feature except for referring to the clearly inapplicable housing 5 of Lasserre.

Thus, Applicant respectfully requests the Pre-Appeal Brief Conference Participants to reverse the rejection of independent claim 4.

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<sup>4</sup> See Office Action dated February 11, 2008, at page 3, lines 7-10.

<sup>5</sup> See Office Action dated February 11, 2008, at page 2, lines 2-3.

<sup>6</sup> See Lasserre at 7:1-5.

Claim 10

Applicant respectfully traverses the rejection of independent claim 10 at least because Lasserre does not disclose all of the claim's recitations. For example, Lasserre does not disclose the claimed fluid dispenser in which the dispenser units are engaged in the receiver means *via a top of the receiver means, such that the reservoirs penetrate firstly into the shell via the receiver means.* That is, as the recited reservoirs (20) are inserted into the shell (6), the reservoirs (20) *pass the receiver means (62) first* (e.g., before the dispenser member (3) or the fastener member (4)).

In contrast, in Lasserre, the containers 3, 4 are inserted into the housing 5 *from below.* Thus, the valves 15 at a top of the containers 3, 4 *passes into the receiver tubes 16 first,* before the top end of the containers 3, 4.

At this time, the Examiner has *provided no comments* with respect to this feature.

Thus, Applicant respectfully requests the Pre-Appeal Brief Conference Participants to reverse the rejection of independent claim 10.

Claim 12

Applicant has added all of the recitations of independent claim 11 to dependent claim 12.

Applicant respectfully traverses the rejection of independent claim 12 at least because Lasserre does not disclose all of the claim's recitations. For example, Lasserre does not disclose the claimed fluid dispenser including a dispenser head that is displaceable by bearing axially in such a manner as to *press the bottom face of the flange against the bearing surfaces.* That is, when the recited dispenser head (5) is displaced, the bottom face of the flange (43) of the fastener member (4) is pressed against the bearing surfaces (622) of the receiver means (62).

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In contrast, in Lasserre, when the actuator 6 is actuated to move the fluid conducting member 10 downward to actuate the valve stem 15, the fluid conducting member 10 bears against notches 22 formed in the top portions of the receiver tubes 16 (asserted as receiver means).<sup>7</sup> As such, the fluid conducting member 10 of Lasserre does not press the collar 16' (asserted as fastener member).

At this time, the Examiner has *provided no comments* with respect to this feature.

Thus, Applicant respectfully requests the Pre-Appeal Brief Conference Participants to reverse the rejection of independent claim 12.

Claims 5-7

Applicant respectfully requests the Examiner to withdraw the rejection of dependent claims 5-7 at least because of their dependency from claim 4.

Respectfully submitted,

/John M. Bird/

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<sup>7</sup> See Lasserre at 6:60-67.